



#10

Docket No. 003252-052961

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: George Brainard  
Serial No.: 09/853,428  
Filed: May 10, 2001  
For: PHOTORECEPTOR SYSTEM FOR MELATONIN REGULATION AND PHOTOTHERAPY

Group: 3739  
Examiner: Roy Dean Gibson

## CERTIFICATE OF MAILING (37 C.F.R. SECTION 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Date 7/7/03

Nicole M. Gignac

(type or print name of person mailing paper)

Signature of person mailing paper

MAIL STOP PETITION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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## FURTHER PETITION

Further to the Decision on Petition Dismissing the Petition under 37 C.F.R. 1.137(a) dated February 8, 2002 in the above-identified application, the undersigned submits the following:

1. Attached hereto please find a response to the outstanding office action in the above-identified application (Attachment A).
2. Secondly, with regard to item 3, noted in the decision on petition, the undersigned notes that in August of 2002, the responsibility for the above-identified application was transferred from Thomas Jefferson University to the undersigned. At that time, the undersigned, or those under his authority and control, reviewed the file and accorded any docketable dates in the firm's computer docket system.

Applicants: George Brainard  
Serial No.: 09/853,428  
Filed: May 10, 2001  
For: PHOTORECEPTOR SYSTEM FOR MELATONIN REGULATION AND PHOTOTHERAPY

Group: 3739  
Examiner: Roy Dean Gibson

A copy of the complete entries for the above-identified application are attached hereto as attachment B.

3. As can be seen from page 2 of attachment B, the only action due in the above-identified application is the present response to the Decision on Petition. If the June 6, 2002 office action was present in the file received by the undersigned, it would have been noted in this computer record.
4. Additionally, Applicants enclose herewith an unexecuted statement from Anthony Rowan of Thomas Jefferson University, the assignee of the application, indicating that he has reviewed the paper record at Thomas Jefferson University and that the June 4, 2002 office action was not present in their copy of the application file (Attachment C). An executed copy will follow under separate cover.

In view of light of the above, Applicants respectfully request that the Petition Under 35 C.F.R. 1.137(a) in the above-identified application be granted.

Applicants enclose herewith a three-month extension of time for response to the Decision to Petition.

Authorization is hereby given to the Commissioner to charge any deficient fees or to credit any overpayment to account no. 50-0850.

Date: \_\_\_\_\_

Respectfully submitted,

Customer No.: 26770

\_\_\_\_\_  
David S. Resnick (Reg. No. 34,235)  
NIXON PEABODY LLP  
101 Federal Street  
Boston, MA 02110

Applicants: George Brainard  
Serial No.: 09/853,428  
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4. Additionally, Applicants enclose herewith an unexecuted statement from Anthony Rowan of Thomas Jefferson University, the assignee of the application, indicating that he has reviewed the paper record at Thomas Jefferson University and that the June 4, 2002 office action was not present in their copy of the application file (Attachment C). An executed copy will follow under separate cover.

In view of light of the above, Applicants respectfully request that the Petition Under 35 C.F.R. 1.137(a) in the above-identified application be granted.

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Authorization is hereby given to the Commissioner to charge any deficient fees or to credit any overpayment to account no. 50-0850.

Date: 7/2/03

Customer No.: 26770

Respectfully submitted,



David S. Resnick (Reg. No. 34,235)  
NIXON PEABODY LLP  
101 Federal Street  
Boston, MA 02110  
(617) 345-6057

PCMaster v3.04.02 - [Patent]

File Edit Records Utilities Tools Help

Client Matter No: 52951  
Country: United States  
Case Type: REGULAR CASE TYPE  
Relation Type: ORIGINAL OR PATENT CASE  
Filing Type: NATIONAL CASE  
Filing Number:

Attorney #1: David & Leena  
Foreign Agent:  
Client Division: Thomas Jefferson University  
Current Owner: 03252  
Attorney #2:

PHOTORECEPTOR SYSTEM FOR MELATONIN REGULATION AND PHOTOTHERAPY

Inventors	Licenses	Other No's	Related Id	Title	Text	Oppositions
Filing Data	Related Party Info	CLT INFO	Actions	Description	Expenses	Ext Files
Status: FILED			First Filing Date: 5/10/2000			
Sub Status: PENDING			Sub Status Date: 8/8/2002*			
Parent Country: United States			Parent Filing Date: 5/10/2000			
Parent Number: 60/203,308			Parent Grant Date:			
Total Claims:			Ind. Claims/Designs:			
Serial Number: 09/853,428			Filing Date: 5/10/2001			
Patent Number:			Issue/Grant Date:			
Publication Number: 2001-0056293			Publication Date: 12/27/2001			
Assigned:			Expiration Date:			
Convention Type:			Tax Base Date:			
Office Location: Boston			Next Tax Date:			

Created: 8/8/2002 Updated: 6/24/2003 1:21 PM By: JAG

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PCMaster v3.04.02 - [Patent]

File Edit Records Utilities Tools Help

Client Matter No: 52961  
Country: United States  
Case Type: REGULAR CASE TYPE  
Relation Type: ORIGINAL OR PATENT CASE  
Filing Type: NATIONAL CASE  
Filing Number:

Attorney #1: David & Leena  
Foreign Agent:  
Client Division: Thomas Jefferson University  
Current Owner: 03252  
Attorney #2:

PHOTORECEPTOR SYSTEM FOR MELATONIN REGULATION AND PHOTOTHERAPY

Inventors	Licenses	Other No's	Related Id	Title	Text	Oppositions
Filing Data	Related Party Info	CLT INFO	Actions	Description	Expenses	Ext Files
Action	Action Due Date	Taken Date	Deadline Date	Completed Date	Responsible Atty #1	
▶ RESPONSE DUE	7/4/2003		8/4/2003			
*						

Created: 8/8/2002 Updated: 6/24/2003 1:21 PM By: UAG

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Only Action Due

PCMaster v3.04.02 - [Patent]

File Edit Records Utilities Tools Help

Client Matter No: 52961  
Country: United States  
Case Type: REGULAR CASE TYPE  
Relation Type: ORIGINAL OR PATENT CASE  
Filing Type: NATIONAL CASE  
Filing Number:   
Attorney #1: David & Leena  
Foreign Agent:   
Client Division: Thomas Jefferson University  
Current Owner: 03252  
Attorney #2:   
PHOTORECEPTOR SYSTEM FOR MELATONIN REGULATION AND PHOTOTHERAPY

Inventors	Licenses	Other No's	Related Id'	Title	Text	Oppositions
Filing Data	Related Party Info	CLT INFO	Actions	Description	Expenses	Ext Files
Action	Action Due Date	Taken Date	Deadline Date	Completed Date	Responsible Atty	
IDS Filed	8/10/2001#	10/29/2002	8/10/2001	11/12/2002		
PUBLISHED	11/10/2001*	12/27/2001	11/10/2001	12/27/2001		
REVIEW MATTER	3/28/2003	3/31/2003		3/31/2003		
1st Office Action	5/10/2003	1/1/1930	9/10/2002	1/1/1930		
RESPONSE DUE	7/4/2003		8/4/2003			
PETITION FOR		1/15/2003		1/27/2003		
NOTICE OF		12/10/2002		12/16/2002		
STATUS INQUIRY		11/14/2002		11/25/2002		
PETITION		2/4/2003		2/7/2003		
POWER OF ATTY		9/27/2002		10/8/2002		
POWER OF		10/15/2002		10/18/2002		

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All Actions Ever Taken

PCMaster v3.04.02 - [Patent]

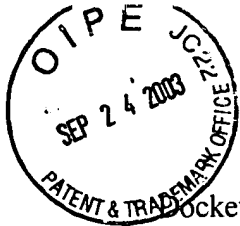
File Edit Records Utilities Tools Help

Client Matter No: 52961  
Country: United States  
Case Type: REGULAR CASE TYPE  
Relation Type: ORIGINAL OR PATENT CASE  
Filing Type: NATIONAL CASE  
Filing Number:   
Attorney #1: David & Leena  
Foreign Agent:   
Client Division: Thomas Jefferson University  
Current Owner: 03252  
Attorney #2:   
PHOTORECEPTOR SYSTEM FOR MELATONIN REGULATION AND PHOTOTHERAPY

Filing Data	Related Party Info	CLT INFO	Actions	Description	Expenses	Ext Files
Inventors	Licenses	Other No's	Related Id	Title	Text	Oppositions
Inventor Name	Assignment Date	Inventor				
George Brainard		George Brainard				
*						

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PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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Serial No.: 09/853,428  
Filed: May 10, 2001  
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Group: 3739  
Examiner: Roy Dean Gibson

**CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. § 1.8(a) and 1.10)**

I hereby certify that this correspondence:

1. Transmittal Form (1 pg.);
2. Copy – Decision mailed July 31, 2003 – Paper No. 13 (3 pp.);
3. Renewed Petition Under 37 C.F.R. 1.137 (2 pp.);
4. Statement from Anthony Rowan (2 pp.);
5. Exhibit A – Complete Copy of File Maintained under Mr. Rowan at Thomas Jefferson University Office of Technology;
6. Return Receipt Postcard;

is on the date shown below being:

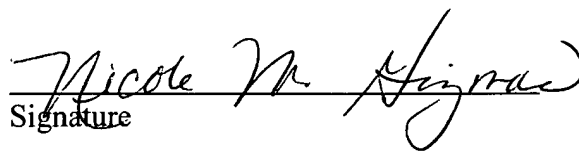
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Date: September 22, 2003

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transmitted by facsimile to the Patent and Trademark Office.

  
Signature

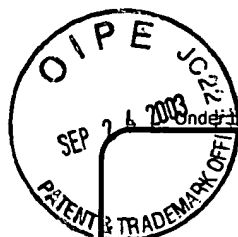
Nicole M. Gignac  
(type or print name of person certifying)

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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	09/853,428
	Filing Date	May 10, 2001
	First Named Inventor	George Brainard
	Art Unit	3739
	Examiner Name	Roy Dean Gibson
Total Number of Pages in This Submission	Attorney Docket Number	003252-052961

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input checked="" type="checkbox"/> Renewed Petition	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please Identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	Copy - Decision; Statement from A. Rowan; Exhibit A; Cert. of Mail; Return Receipt Postcard.
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Certified Copy of Priority Document(s)	Remarks	
<input type="checkbox"/> Response to Missing Parts/Incomplete Application	The Commissioner is authorized to charge the NIXON PEABODY LLP Deposit Account No. 50-0850 for fees associated with this submission.	
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm or Individual name	David S. Resnick (Reg. No. 34,235) NIXON PEABODY LLP, 101 Federal Street, Boston, MA 02110	
Signature		
Date	9/22/03	

CERTIFICATE OF TRANSMISSION/MAILING		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below. Washington, DC 20231 on this date:		
Typed or printed name	Nicole M. Gignac	
Signature		Date September 22, 2003

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Docket No. 003252-052961

ATTACHMENT A

PATENT # 11/6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Serial No.: 09/853,428  
Filed: May 10, 2001  
For: PHOTORECEPTOR SYSTEM FOR MELATONIN REGULATION AND PHOTOTHERAPY  
Group: 3739  
Examiner: Roy Dean Gibson

CERTIFICATE OF MAILING (37 C.F.R. SECTION 1.8(a))

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AMENDMENT

In response to the Office Action of June 6, 2002, please amend the above-identified application as follows:

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

Remarks/Arguments begin on page of this paper.

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### In The Claims

Claim 1 (currently amended) A method of treating or preventing a light responsive disorder in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system emits a balance of wavelengths to stimulate a circadian, photoneural, or neuroendocrine system of said mammal, said balance of wavelengths having a peak sensitivity ranging from 425—505 435 – 488 nm.

Claim 2 (original) The method of Claim 1, wherein said light responsive disorder is at least one of the group of seasonal affective disorder (SAD), a sleep disorder, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

AI  
Claim 3 (currently amended) A method of minimizing circadian and neuroendocrine stimulation or disruption ~~treating a light responsive disorder~~ in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system excludes emission of a balance of wavelengths to stimulate a circadian, photoneural, or neuroendocrine system of said mammal, said balance of wavelengths having a peak sensitivity ranging from 425—505 435 – 488 nm.

Claim 4 (canceled)

Claim 5 (currently amended) A light system, comprising at least one light source, said light source emitting a balance of wavelengths to stimulate a mammalian circadian, photoneural, or neuroendocrine system, said balance of wavelengths having a peak sensitivity ranging from 425—505 435 – 488 nm.

Claim 6 (currently amended) A light system, comprising at least one light source, said light source excluding emission of a balance of wavelengths to stimulate a mammalian

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circadian, photoneural, or neuroendocrine system, said balance of wavelengths having a peak sensitivity ranging from ~~425—505~~ 435 – 488.

Claim 7 (canceled)

Claim 8 (canceled)

Claim 9 (canceled)

Claim 10 (canceled)

41  
Claim 11 (currently amended) A method of treating a light responsive disorder in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system comprises at least one light source and at least one transparent material component, said light source emitting light through said transparent material component, said transparent material component comprising at least one light filtering component, said light filtering component specifically transmitting a balance of wavelengths to stimulate a circadian, photoneural, or neuroendocrine system of said mammal, said balance of wavelengths having a peak sensitivity ranging from ~~425—505~~ 435 – 488 nm.

Claim 12 (original) The method of Claim 11, wherein said light responsive disorder is at least one of the group of seasonal affective disorder (SAD), a sleep disorder, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

Claim 13 (currently amended) A method of treating a light responsive disorder in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system comprises at least one light source and at least one translucent material component, said light source emitting light through said translucent material component, said

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translucent material component comprising at least one light filtering component, said light filtering component specifically transmitting a balance of wavelengths to stimulate a circadian, photoneural, or neuroendocrine system of said mammal, said balance of wavelengths having a peak sensitivity ranging from 425—505 435 – 488 nm.

Claim 14 (original) The method of Claim 13, wherein said light responsive disorder is at least one of the group of seasonal affective disorder (SAD), a sleep disorder, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

Al  
Claim 15 (original) A method of treating a light responsive disorder in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system comprises at least one light source and at least one transparent material component, said light source emitting light through said transparent material component, said transparent material component comprising at least one light filtering component, said light filtering component specifically blocking a balance of wavelengths to stimulate a circadian, photoneural, or neuroendocrine system of said mammal, said balance of wavelengths having a peak sensitivity ranging from 425 - 505 nm.

Claim 16 (canceled)

Claim 17 (currently amended) A method of minimizing circadian and neuroendocrine stimulation or disruption ~~treating a light responsive disorder~~ in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system comprises at least one light source and at least one translucent material component, said light source emitting light through said translucent material component, said

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Al translucent material component comprising at least one light filtering component, said light filtering component specifically blocking a balance of wavelengths to stimulate a circadian, photoneural, or neuroendocrine system of said mammal, said balance of wavelengths having a peak sensitivity ranging from 425 - ~~5055~~ 505 nm.

Claim 18 (canceled)

Claim 19 (canceled)

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### **REMARKS/ARGUMENTS**

The present invention relates to Applicant's surprising discovery that human melatonin suppression peaks between 435-488 nm (fig. 11) and that by exposing patients to these wavelengths, light responsive disorders can be treated. Conversely, Applicant has discovered that exposing a patient to light in which these wavelengths have been excluded minimizes circadian and neuroendocrine stimulation or disruption. For example, in other words, exposure to light in which these wavelengths have been excluded will allow one to fall a sleep, while exposure to these wavelengths will stimulate wakefulness.

The claims have been amended to further define the present invention and expedite prosecution. Specifically, claims 4, 7 – 10, 16, and 18 – 19 have been canceled. The remainder of the claims have been amended to recite that the peak sensitivity ranges from 435 – 488nm. Support can be found in Figure 11. The sensitivity range from 435-488 nm relates to the top 25% sensitivity for human melatonin suppression peaks between 435 and 488 nm, as is illustrated in Figure 11 of the present application. Figure 11 describes a spectrally weighted function that is specifically distinct from previously described functions for human day and night vision<sup>1 2</sup> as well as other light driven photobiological responses<sup>3</sup>. No new matter has been added by the amendments to the claims.

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<sup>1</sup> COMMISSION INTERNATIONALE DE L'ECLAIRAGE: Guide on Interior Lighting, CIE Publication No. 29.2, Vienna, pp. 1 – 113, 1986.

<sup>2</sup> ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA, ed.: Lighting Handbook: Reference & Application, Illuminating Engineering Society of North America, New York, pp. 1 – 989, 1993.

<sup>3</sup> ILLUMINATING ENGINEERING SOCIETY RP-27.1 Photobiological Safety for Lamps and Lamp Systems – General Requirements, 1995.

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*Claims 3 – 4 and 15 - 18 stand rejected under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.*

Applicant respectfully submits that the amendments to claims 3 and 15 have obviated this rejection which should therefore be withdrawn. In order to expedite prosecution, claims 4 and 16 – 18 have been canceled. Accordingly, the rejection has been obviated and should be withdrawn.

*Claims 1, 2, 5 and 11 - 14 stand rejected under 35 U.S.C. 102(b) as being anticipated by Waldman (5,447,527).*

Applicant respectfully disagrees and request that this rejection be withdrawn for the following reasons.

As noted above, the claims now recite a range is from 435 – 488 nm and thus no longer overlap Waldman.

In light of the above and the amendments to the claims, Applicants respectfully requests that the rejection be withdrawn.

*Claims 6, 9 and 10 stand rejected under 35 U.S.C. 102(b) as being anticipated by Fujishima et al. (5,855,595).*

Applicant respectfully submits that claim 6 specifically excludes the wavelengths from 435-488 nm. This is not taught or suggested by the cited reference and thus there can be no anticipation. Accordingly, Applicant requests that the rejection be withdrawn.

*Claims 7 and 8 stand rejected under 35 U.S.C. 102(b) as being anticipated by Girerd (5,083,858).*



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Applicant respectfully disagrees and request that this rejection be withdrawn for the following reasons.

In light of the cancellation of claims 7 and 8, the rejection has been obviated and should be withdrawn.

*Claim 19 stands rejected under 35 U.S.C. 102(b) as being anticipated by Hegyi (5,235,178).*

Applicant respectfully disagrees and request that this rejection be withdrawn for the following reasons.

In light of the cancellation of claim 19, the rejection has been obviated and should be withdrawn.

In light of the above and the amendments to the claims, Applicants respectfully requests that the rejection be withdrawn.

*Claims 1, 2 and 5 stand rejected under 35 U.S.C. 102(e) as being anticipated by Goldman (5,923,398).*

Applicant respectfully disagrees and request that this rejection be withdrawn for the following reasons.

As noted above, the claims now recite a range from 435 – 488 nm and thus no longer overlap Goldman.

In light of the above and the amendments to the claims, Applicant respectfully requests that the rejection be withdrawn.

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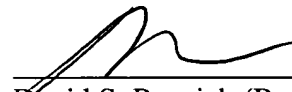
In view of the above and foregoing, it is respectfully submitted that the claims now on file are believed to be in condition for allowance, and prompt and favorable action is earnestly solicited. Should there be any question concerning this response or the application in general, the Examiner is respectfully urged to telephone the undersigned so that prosecution of this application may be expedited.

Authorization is hereby given to the Commissioner to charge any deficient fees or to credit any overpayment to account no. 50-0850.

Date: 7/7/03

Respectfully submitted,

Customer No.: 26770

  
David S. Resnick (Reg. No. 34,235)  
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ATTACHMENT C

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I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being faxed to the attention of Joyce Riley at the U.S. Patent and Trademark Office, Washington, D.C. 20231.	
Date <u>7/7/03</u>	<u>Nicole M. Gignac</u> (type or print name of person mailing paper)
	 Signature of person mailing paper

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P.O. Box 1450  
Alexandria, VA 22313-1450

STATEMENT FROM ANTHONY ROWAN

I, Anthony Rowan, state as follows:

1. I am a licensing assistant in the Office of Technology Transfer at Thomas Jefferson University, the assignee of the above-identified application;
2. I have reviewed the physical file of the above-identified application that is in our office;
3. The Office Action mailed June 6, 2002 is not in this file;
4. The computer records relating to this application are not accessible to our office;

Applicants: George Brainard  
Serial No.: 09/853,428  
Filed: May 10, 2001  
For: PHOTORECEPTOR SYSTEM FOR MELATONIN REGULATION AND PHOTOTHERAPY

Group: 3739  
Examiner: Roy Dean Gibson

5. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application and any patents issuing thereon.

Date: \_\_\_\_\_

\_\_\_\_\_  
Anthony Rowan